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NO.

Supreme Court, U.S.
FILED

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1986

JHJ LIMITED I,

Respondent,

VERSUS

CHEVRON U.S.A. INC.,

Petitioner.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

D. A. MOLONY
Chevron U.S.A. Inc.
935 Gravier Street
New Orleans, LA 70112

OF COUNSEL:

MILLING, BENSON,
WOODWARD, HILLYER,
PIERSON & MILLER

JOHN C. CHRISTIAN
M. TAYLOR DARDEN
1100 Whitney Building
New Orleans, LA 70130
Tel.; (504) 581-3333

Attorneys for
CHEVRON U.S.A. INC.

QUESTIONS PRESENTED

1. Whether the Court of Appeals denied Petitioner, Chevron U.S.A. Inc., of its right of appellate review over the federal constitutional claims alleged by it in this proceeding when it affirmed the District Court's Judgment based solely upon the Erie doctrine?

2. In holding that the Louisiana Oil Well Lien Statute, La. R.S. 9:4861 et seq. grants lien rights to Respondent, JHJ Limited I, on those portions of the oil, gas and mineral lease owned by Petitioner situated beyond the conservation unit on which Respondent's drilling services were rendered, does not the judgment complained of:

(a) Authorize a taking of Petitioner's property without any

compensation, in violation of the Taking Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States?

(b) Violate Petitioner's right of substantive due process as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States?

(c) Deny Petitioner equal protection under the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

LIST OF PARTIES

1. Petitioner - Chevron
U.S.A. Inc.; parent company - Chevron
Corp.; affiliated companies - A.K.
Chemie G.m.b.H.; A/S Hydrantanlaegget
Koebenhavns Lufthavn, Kastrup;
Aircraft Fuel Supply B.V.; AMAX Inc.;
Arabian American Oil Company; Aramco
Overseas Company; Aramco Services
Company; Associated Ocel Company
(Plant) Limited; Associated Ocel
Company Limited, The; Atlas Supply
Company; Burgan Pension Fund Trustees
Limited; Canaport Limited; Cansulex
Limited; Canyon Reef Carriers, Inc.;
Cetus Corporation; Compania De Niquel
Colombiano, S.A.; Coromandel
Fertilisers Limited; DE BA - S.p.A. -
Industria Petrolifera; Felix Oil
Company; Freeport Trading Company

Limited; Glen Park Gas Pipeline
Company Limited; Hydrant Servicing
Company Limited; International Gas
Transportation Company Limited;
Iranian Oil Participants Limited;
Iranian Oil Services (Holdings)
Limited; Irving Oil Company, Limited;
Irving Oil Limited; Irving Oil
Terminals Ltd.; Karonite Chemical
Company, Limited; Laurel Pipe Line
Company; Long Beach Oil Development
Company; Maasvlakte Olie Terminal
N.V.; Mainline Pipelines Limited;
Marine Agents and Brokers Limited;
MARS - Milan Airport Refuelling
Services S.p.A.; Mittelland Refinery
Limited; N.V. Rotterdam-Rijn
Pijpleiding Maatschappij; Nippon
Petroleum Detergent Company Limited;
Octel Societe Anonyme; Oil Insurance
Limited; Oil Investment Corporation

Ltd.; Pembroke Capital Company Inc.;
Petrosynthese S.A.; Plantation Pipe
Line Company; Raffineria de Roma
S.p.A.; Rimbey Pipe Line Co. Ltd.;
River Nile Petroleum Company Limited;
Rotterdam-Antwerpen Pijpleiding
(Nederland) N.V.; Rotterdam-Antwerpen
Pipjpleiding (Belgie) N.V.; SARACO
S.A.; Saudi Cable Company; SERAM -
S.p.A.; Societa per Azione Raffineria
Padana Olii Minerali SARPOM; Societe
d'Etude et d'Exploitation de la
Raffinerie du Tchad; Standard Pacific
Gas Line Incorporated; Sultran Ltd.;
TAR - Tankanlage Ruemlang A.G.;
Trans-Arabian Pipe Line Company;
UBAG-Unterflurbetankungsanlage
Flughafen Zurich; UNC Incorporated;
United Kingdom Oil Pipelines Limited;
West Texas Gulf Pipe Line Company.

2. Respondent - JHJ Limited
I, Managing General Partner - JHJ
Drilling Company; General Partners -
Warren J. Hudson of Houston, Texas;
Herman E. McInnis of Houston, Texas;
and Jerry L. Gibson of Houston, Texas;
the Limited Partners - Leslie
Alexander of Hollywood, Florida;
Thomas M. Biggs of Houston, Texas;
Jill A. Bradburn Family Trust of La
Jolla, California; Donald W. Brinckman
of Crystal Lake, Illinois; Mary Lee
Coleman of La Jolla, California;
William Diener of Chicago, Illinois;
Double-D Ranch, Inc. of New York, New
York; William J. Estrada of Houston,
Texas; Stanley H. Feldberg of
Wellesley Hills, Massachusetts; Fresno
Oil Company of Wichita Falls, Texas;
Frank H. Gower, Jr. of Ft. Meyers,
Florida; Russell A. Gwillim of

Elmhurst, Illinois; Robert S. Harp and Lore Harp of Westlake Village, California; Edwin V. Harris and Eilean G. Harris of San Diego, California; Haynes & Shirley Oil Company of Electra, Texas; Marvin B. Herscher of Cherry Hill, New Jersey; William Hudson and Mildred Crane Hudson of Weatherford, Texas; Milan J. Kalus of Amarillo, Texas; James M. Keelin of Atlanta, Georgia; Steven Knuckley of Wichita Falls, Texas; Robert A. Morris, Jr. of Sarasota, Florida; A.L.E. Schoonheim Samara of Manchester, New Hampshire; Shearson Loeb Rhoades Inc. of New York, New York; Hardwick Simmons of New Canaan, Connecticut; Margaret Simmons of Vero Beach, Florida; Smith Associates of Willsby, Massachusetts; James P. Tumpane of Al Khobar, Saudi Arabia;

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Thomas R. Turman of Dallas, Texas; Abe
W. Wagner of Seagoville, Texas; Robert
W. Wetzel of Holden, Massachusetts;
and Stanley F. Witkowski of Chatham
Township, New Jersey.

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PETITION FOR WRIT OF CERTIORARI
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Chevron U.S.A. Inc.

("Chevron") petitions for a writ of
certiorari to review the judgment of
the United States Court of Appeals for
the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A) is reported at 806 F.2d 82. The opinion of the District Court (App. B) is reported at 617 F.Supp. 729.

JURISDICTION

The opinion of the Court of Appeals was issued on December 19, 1986 (App. A). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

28 U.S.C. §1254(1) (1980)

provides:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * *

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

"Section 1. * * * No State shall make or enforce any law which shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the United States Constitution provides in pertinent part:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Louisiana Oil Well Lien Statute, La. R.S. 9:4861 et seq., in force at the time this case was decided provided, in pertinent part, as follows:

"Sec. 4861. Privilege for labor, services or supplies

Any person who performs any labor or service in drilling or in connection with the drilling of any well or wells in search of oil, gas or water, or who performs any labor or service in the operation or in connection with the operation of any oil, gas or water well or wells, has a privilege on all oil or gas produced from the well or wells, and the proceeds thereof inuring to the working interest therein, and on the oil, gas or water well or wells and the lease whereon the same are located, and on all drilling rigs, standard rigs, machinery, appurtenances, appliances, equipment, buildings, tanks, and other structures thereto attached

or located on the lease,
 for the amount due for
 labor or service, in
 principal and interest,
 and for the cost of pre-
 paring and recording the
 privilege, as well as
 ten percent attorney's
 fees in the event it
 becomes necessary to
 employ an attorney to
 enforce collection.
 * * *

STATEMENT

Respondent, JHJ Limited I
 ("JHJ"), instituted this proceeding¹
 seeking judicial recognition of a lien
 granted under the Louisiana Oil Well
 Lien Statute, La. R.S. 9:4861 et seq.,
 against an oil, gas and mineral lease

¹This suit was originally
 filed in state court but was removed
 by Chevron to the United States
 District Court for the Middle District
 of Louisiana pursuant to 28 U.S.C.
 §1441. Jurisdiction was based upon
 diversity of citizenship and amount in
 controversy in excess of \$10,000,
 excluding interest and costs. 28
 U.S.C. §1332.

which Petitioner, Chevron U.S.A. Inc. ("Chevron") acquired from one Robert H. Wunsch (hereafter the "Wunsch lease") covering land situated in Livingston Parish, Louisiana.

JHJ's claim arose because Martin Exploration Company ("Martin") failed to pay JHJ for a well which it drilled for Martin (but which was never completed, and thus never produced) on a portion of Chevron's Wunsch lease acreage which was included within a drilling and production unit created by the Louisiana Commissioner of Conservation pursuant to the authority of the Louisiana Conservation Act, La. R.S. 30:1 et seq.

Chevron was not a party to the drilling contract between Martin and JHJ, and did not participate in the drilling of Martin's well. Thus,

Chevron has no personal liability to JHJ for any of the debts owed to it by Martin; its liability, if any, is in rem, as the lien applies only against Chevron's Wunsch lease by virtue of the Louisiana Oil Well Lien Statute.

Pursuant to a writ of sequestration which JHJ obtained, the Sheriff of Livingston Parish seized all of Chevron's leasehold interest in the Wunsch lease. Included within the scope of this writ was Chevron's Wunsch lease share of production and the proceeds of such production from other wells situated in other units created by the Commissioner within which portions of the Wunsch lease are also situated. JHJ did not provide any services, or furnish any materials in connection with the drilling or completion of those producing wells.

Those wells are operated by Amoco Production Company, and are not located on Chevron's Wunsch lease.²

As interpreted and applied by the courts below, the Louisiana Oil Well Lien Statute, pursuant to which JHJ's lien is claimed, is unconstitutional as applied to Chevron, as a taking of Chevron's property rights without compensation and without due process of law. Furthermore, as applied in relation to Louisiana's Conservation Act, La. R.S. 30:1 et seq., the statute denies Chevron its

²A land plat which shows the three drilling units created by the Louisiana Commissioner of Conservation pursuant to La. R.S. 30:9, together with the acreage of Chevron's mineral lease (colored) which is contributed to each, is attached as Appendix E. It also shows the location of Martin's well on Chevron's Wunsch lease, together with the location of the two Amoco operated wells.

right to equal protection under the law. All of these rights are guaranteed to Chevron by the Fifth and Fourteenth Amendments to the Constitution of the United States.

The District Court recognized the validity of JHJ's lien as to all portions of the Wunsch lease, as well as to all oil and gas production (and proceeds) attributable thereto from the Amoco operated wells located in the other units for which JHJ provided no materials or services. In doing so, the Court rejected Chevron's claim that, as applied to it under the facts of this case, the Louisiana Oil Well Lien Statute, La. R.S. 9:4861 et seq., is unconstitutional.

The Fifth Circuit Court of Appeals affirmed, but did so upon Erie principles. Six months prior to the

Fifth Circuit's decision, a Louisiana state court of appeals had rendered its decision in Lor, Inc. v. Martin Exploration Co., 489 So.2d 1326 (La. App. 1st Cir. May 28, 1986), writ den. 493 So.2d 1217 (La. 1986). That suit is the companion case to the one presented by this writ application. It involves the same property and the identical issues; only the parties, with the exception of Chevron, are different.³

In Lor, the Louisiana state court of appeals adopted as its own almost the entire opinion of the United States District Court in the instant case. And, even though

³On December 24, 1986, Chevron appealed the Lor decision to this Honorable Court where same is presently pending under docket No. 86-1198.

Chevron timely appealed the Federal District Court's decision to the Fifth Circuit Court of Appeals, that Court found the state appellate court's decision to be determinative of its appeal, notwithstanding that the state court's decision was, in effect, the very opinion which Chevron had appealed to the Fifth Circuit.

By affirming the United States District Court based solely upon the Erie doctrine, the Fifth Circuit Court of Appeals refused to consider the federal constitutional issues which Chevron raised regarding the Louisiana Oil Well Lien Statute. Thus, the Fifth Circuit has effectively denied Chevron its right of appellate review over the federal constitutional claims raised by it in this proceeding.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to review the decision of the United States Fifth Circuit Court of Appeals because:

1. By its affirmance of the District Court's decision based solely upon Erie principles, the Court of Appeals effectively denied Chevron appellate review over its federal constitutional claims; and

2. The Louisiana Oil Well Lien Statute, as applied to Chevron under the particular facts of this case, violates the Taking Clause of the United States Constitution, and denies Chevron its constitutionally guaranteed rights of substantive due process and equal protection under the law.

I.

**The Erie Doctrine Applies Only
To Issues of State Substantive Law,
Not To Federal Constitutional Issues**

In Erie R. Co. v. Tompkins,
304 U.S. 64, 82 L.Ed. 1188 (1938),
this Court said:

"Except in matters
governed by the Federal
Constitution or by acts
of Congress, the law to
be applied in any case
is the law of the
state." (304 U.S. at
78).

While the Erie doctrine re-
quires a federal court sitting in
diversity to apply the substantive law
of the forum state, it does not
require application of state court
decisions on matters which are exclu-
sively federal in nature. Thus, a
federal court is not bound, under
Erie, by a state court's determination
as to the validity of a state statute

under the Federal Constitution. As this Court said in Ward & Gow v. Krinsky, 259 U.S. 503, 66 L.Ed. 1033 (1922):

"But this court, while bound by the construction of the statute adopted by the state court of last resort - that being a question of state law - is not concluded by its reasoning, but must exercise independent judgment, when called upon to determine the federal question, whether an act as construed and applied, is repugnant to the restrictions of the [Fourteenth] amendment." (259 U.S. at 250).

Even the Fifth Circuit Court of Appeals has recognized this basic limitation on the Erie doctrine's application. Woods v. Holy Cross Hospital, 591 F.2d 1164, 1171-1172 (5th Cir. 1979). Despite this prior recognition, however, that court

refused to consider the federal constitutional claims urged by Chevron in this case, holding instead that it was Erie bound by the state appellate court's decision in Lor, Inc. v. Martin Exploration Company, supra, 489 So.2d 1326 (La. App. 1st Cir. 1986), writ. den., 493 So.2d 1217 (La. 1986), including that court's rulings on the federal constitutional claims which Chevron had raised. In doing so, the Fifth Circuit effectively denied Chevron its right of federal appellate review over these claims.

II.

The Louisiana Oil Well Lien Statute Authorizes A Taking Of Chevron's Property Without Compensation

Under the Fifth and Fourteenth Amendments to the United States Constitution, state governments have

the power to regulate the use of private property, provided that such regulation represents reasonable exercise of the state's inherent police power. Goldblatt v. Town of Hempstead, 369 U.S. 590, 8 L.Ed.2d 130 (1962). That regulation, however, will be deemed unconstitutional "when it goes so far as to become a taking" of the property. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 67 L.Ed. 322 (1922). Or, as Justice Clark said in Goldblatt v. Town of Hempstead, 369 U.S. 590, 8 L.Ed.2d 130, 133-134 (1962):

"This is not to say, however, that governmental action in the form of regulation cannot be so onerous as to constitute a taking which constitutionally requires compensation."

This Court has consistently held that a constitutional challenge

to the exercise of legislative power on the grounds that it operates as a taking without compensation requires a two step analysis. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 425, 73 L.Ed.2d 868 (1982); Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 57 L.Ed.2d 631 (1978), reh. den., 439 U.S. 883, 58 L.Ed.2d 198 (1978).

First, the legislative act must be scrutinized to determine if it represents a rational exercise of the State's inherent police power. If the act fails to meet this test, it is facially unconstitutional, and no further scrutiny of the act is necessary. If, however, the act is constitutional on its face, it must still meet a second level of analysis: the Court must assess the impact of the

act on the affected property. Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 136, 57 L.Ed.2d 631 (1978), reh. den., 439 U.S. 883, 58 L.Ed.2d 198 (1978). An act found to be a legitimate exercise of legislative authority may be unconstitutional, as applied, if it operates as a total deprivation of the use or value of the affected property, or results in the use or occupation of the property without compensation. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 425-26, 73 L.Ed.2d 868 (1982).

The threshold question presented by this application is whether the Louisiana Oil Well Lien Statute is a legitimate exercise of the state's inherent police power. In evaluating the reasonableness of a statute, the

Court is required to review its purpose, the availability of alternative protective measures and the loss caused by the statute. Goldblatt v. Town of Hempstead, 369 U.S. 590, 594, 8 L.Ed.2d 130 (1962).

The legislative intent in enacting the Louisiana Oil Well Lien Statute is to protect unpaid laborers and materialmen by providing them with a privilege on the property for which their labor and services have been supplied. Sargent v. Freeman, 204 La. 997, 16 So.2d 737, 739 (1943). It is irrational, however, to assert that this purpose is served by the granting of a lien over a leasehold interest in oil and gas production and its proceeds from wells for which the lien claimant provided absolutely no services. Under that analysis, the

statute merely substitutes one financial loss for another, i.e., Chevron's for JHJ's, and there is nothing to support the argument that Chevron is any less worthy of protection than JHJ.

Alternative means of protecting parties such as JHJ are readily available. Oil field laborers and materialmen would be reasonably protected by limiting the reach of the Louisiana Oil Well Lien Statute to property which has directly benefited from their labor and materials. That would include the entire working interest of the mineral leasehold in the well (and conservation unit) for which the lien claimant's services were rendered. In addition, the lien claimant will always be able to look to the assets of the party employing his services for payment of the

amounts due, which party, of course, remains personally liable for the debt incurred.

Moreover, the statute fails to pass constitutional muster when the impact of the statute on the affected property is considered. By granting an in rem lien against Chevron's Wunsch lease interest in wells which are neither located on its lease, nor serviced by JHJ, Chevron is being deprived, for no legitimate reason, of its right to possess, use and dispose of its Wunsch lease interest in those wells. This Court has consistently held that governmental action resulting in the deprivation of these fundamental property rights constitutes a taking for which compensation is required. Loretto v. Teleprompter

Manhattan CATV Corp., 458 U.S. 419, 435, 73 L.Ed.2d 868 (1982).

Louisiana law provides that the privilege created by the Oil Well Lien Statute may be enforced by a writ of sequestration and that the seized property can be sold to satisfy a judgment recognizing the validity of the lien claimant's privilege. The Louisiana Oil Well Lien Statute, therefore, sanctions and legitimates a deprivation of Chevron's right to possess, use and dispose of its property. As applied to the particular facts of this case, the statute unconstitutionally authorizes a taking of Chevron's Wunsch lease participation in two unit wells neither serviced by JHJ, nor located on the lease.

III.
The Louisiana Oil Well Lien
Statute Violates Chevron's
Right Of Substantive Due Process

The Fourteenth Amendment to the United States Constitution guarantees that:

"No State shall * * *
deprive any person of
life, liberty, or
property without due
process of law * * *"

Applying the Louisiana Oil Well Lien Statute so that JHJ can enforce its lien against those portions of Chevron's Wunsch lease on which JHJ did not perform any work or furnish any supplies violates the substantive aspects of this constitutional guarantee. In order for the legislation to be constitutionally valid there must be a rational connection to a valid state objective. New

Orleans v. Dukes, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed. 2d 511 (1976).

There is no rational basis for imposing liability for all of JHJ's lien on that portion of Chevron's lease where JHJ performed no services, particularly where Chevron had no personal liability for any of the costs incurred in the drilling of Martin's well on another portion of the lease. In fact, it is completely irrational to impose the entire burden of this lien on Chevron simply because Martin's unit well happened to be drilled on its Wunsch lease - the result of a decision in which Chevron did not participate, and which could have been made over Chevron's objection. Nunez v. Wainoco Oil & Gas Company, 488 So.2d 955 (La. 1986), cert. den. and app. dismissed, 55 USLW

3315, 93 L.Ed.2d 345 (1986). No other working interest owner in the unit for which this well was drilled is exposed to any similar liability.

In addition to being irrational, the lower courts' interpretation of this statute completely ignores the facts that both the Wunsch lease and the Louisiana Oil Well Lien Statute have been superseded by the Louisiana Conservation Act, La. R.S. 30:1 et seq., and the Commissioner's Orders issued pursuant thereto. By applying the statute without regard to the effect of those Orders, Chevron faces a loss of property which the Louisiana Legislature never intended to impose. The result is that Chevron is deprived of its Wunsch lease participation in two unit wells, neither serviced by the lien claimant nor

located on the Wunsch lease, in clear violation of the substantive due process protections guaranteed to it by the Fourteenth Amendment to the United States Constitution.

IV.

The Louisiana Oil Well Lien Statute Violates Chevron's Right Of Equal Protection Under The Law

The Fourteenth Amendment guarantees that all persons similarly situated will be dealt with alike, and prohibits arbitrary discrimination between persons similarly situated. However, in the face of that guarantee, Chevron is being treated unequally.

The protection afforded by the constitutional guarantee of equal protection is applicable to corporations, like Chevron, as well as individuals. Metropolitan Life Insurance

Co. v. Ward, 470 U.S. 869, 84 L.Ed.2d 751 (1985), reh. den., 471 U.S. 1120, 86 L.Ed.2d 269 (1985). Chevron, therefore, is entitled to demand that the exercise of the State's inherent police power, i.e., the seizure of its property as authorized by the Louisiana Oil Well Lien Statute, be subject to the constitutional limitation that the State of Louisiana shall not deny equal protection of the law to any person within its jurisdiction.

This Court must conclude that the classification established by the State of Louisiana, i.e., imposing in rem liability for lien claims only upon the the lease on which the unit well is physically located, is arbitrary in terms of the permissible aims of governmental action where, as here, the lease participates in more than

one unit, and where principles of Louisiana law relating to the unitization of oil and gas interests, declare that all operations conducted within a unit are considered as operations constructively conducted on each of its component leases. Delatte v. Woods, 232 La. 341, 94 So.2d 281 (1957); Hardy v. Union Producing Co., 207 La. 137, 20 So.2d 734 (1944).

State statutes attacked on federal equal protection grounds are traditionally analyzed under a twotier scheme of review. If the statute operates to the disadvantage of some suspect class or impinges upon a fundamental right either explicitly or implicitly protected by the Constitution, this Court has held that a strict judicial scrutiny of the statute is required. San Antonio

Independent School District v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973), reh. den., 411 U.S. 959, 36 L.Ed.2d 418 (1973); Bullock v. Carter, 405 U.S. 134, 31 L.Ed.2d 92 (1972). In all other cases, the statute is analyzed under a "rational basis" standard. McGowan v. Maryland, 366 U.S. 420, 6 L.Ed. 393 (1961).

(a)
The Strict Scrutiny Test

In the instant case, the Louisiana Oil Well Lien Statute limits Chevron's right to enjoy, use and control its property. This court has ruled that the right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in fact a fundamental civil right guaranteed by the Constitution. Lynch v. Household Finance

Corporation, 405 U.S. 538, 31 L.Ed.2d 424 (1972), reh. den., 406 U.S. 911, 31 L.Ed.2d 822, holding:

"Property does not have rights. People have rights. * * * In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. That rights in property are basic civil rights has long been recognized."
(405 U.S. at 552)

Because the Louisiana Oil Well Lien Statute regulates and limits a fundamental right of Chevron, its provisions must pass constitutional muster under the strict scrutiny standard of review in order to withstand an attack on equal protection grounds. The essence of this test was set forth in Weber v. Aetna Casualty & Surety Company, 406 U.S. 164, 31 L.Ed.2d 768 (1972), where this Court said:

"Though the latitude given state economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrutiny, Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). The essential inquiry in all the foregoing cases is, however, inevitably a dual one: What legitimate state interest does the classification promote? What fundamental personal rights might the classification endanger?" (406 U.S. at 172-173)

As previously noted, the Louisiana Oil Well Lien Statute was enacted to protect those who supply services and materials in connection with drilling a well. Sargent v. Freeman, supra, 204 La. 997, 16 So.2d

737 (1943), The statute, however, was originally passed by the Louisiana legislature long before the adoption of the Louisiana Conservation Act, La. R.S. 30:1 et seq. in 1940. No court, however, has ever addressed the impact which unitization has had on the lien rights granted under this statute. The operation and interaction of these two statutes simply cannot be ignored, for it is because the courts below granted JHJ the benefits of unitization while refusing to recognize its effects, that Chevron is being denied its constitutional right to equal protection under the law.

Under Louisiana's concept of oil and gas unitization, all of the mineral interest owners in a unit contribute, either up front in cash, or from their proportionate share of the

proceeds of production, to the cost of drilling the unit well. The Louisiana Conservation Act establishes the framework under which mineral owners with an interest in a drilling unit participate, or refuse to participate, in the drilling of the unit well, and the method by which their share of the cost of drilling and producing the well is calculated. La. R.S. 30:10A(2)(b)(i).

Under the decisions of the District Court and the Court of Appeals, of all the mineral owners in the unit where Martin's well was drilled, only Chevron's Wunsch lease acreage is affected by JHJ's lien, even though each of those owners stood to benefit from the drilling of the Martin's well, and would have shared proportionately in its production, had

it been completed as a producer. It is simply because the Commissioner of Conservation fixed the drill site location of Martin's unit well on the Wunsch lease that Chevron alone is exposed to in rem liability for the entirety of JHJ's claim. No other lessee in this unit has any similar exposure for any portion of JHJ's claim. There is no compelling state interest that can possibly justify placing the entire burden of JHJ's lien on Chevron's Wunsch lease, particularly when all of the other leases which were included in this unit would have shared in unit production proportionate to their respective interests, had Martin's well been completed as a producer.

This is not a case of a lien claimant seeking payment for his services from the actual well which

received those resources. On the contrary, the courts below applied the Louisiana Oil Well Lien Statute so as to allow JHJ to recover payment for services rendered by it on Martin's well out of production from other wells, located on different leases in different units, and for which JHJ provided no services whatsoever. The decisions of the lower courts recognize the principle of unitization, by allowing JHJ to have its lien satisfied out of production from wells located off the Wunsch lease, solely because a portion of the Wunsch lease is included in other producing units, but refuse to acknowledge the effect of unitization, i.e., that a lease's participation within a unit is limited by the boundaries established through the unitization process.

The purpose of the Louisiana Oil Well Lien Statute is just as easily fulfilled by limiting the effect of the lien to the unitized portions of the leases forming a part of the unit for which the lien claimant's services were rendered. That interpretation is reasonable and consistent with Louisiana's concept of unitization, La. R.S.30:1, et seq. Any other interpretation places the Lien Statute and the Conservation Acts in direct conflict, and results in an unconstitutional denial of Chevron's right to equal protection under the law.

(b)

The 'Rational Relation' Test

Alternatively, when economic regulation is challenged as violating the Equal Protection Clause, this

Court has also used the "rational relation" test, the determinative factor of which is whether the classification is reasonably related to the avowed purpose of the legislation. McGowan v. Maryland, 366 U.S. 420, 6 L.Ed.2d 393 (1961). A resolution of this question requires a consideration of (a) whether the challenged legislation has a legitimate purpose, and (b) whether it was reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose. Western & Southern Life Insurance Company v. State Board of Equalization of California, 451 U.S. 648, 668, 68 L.Ed.2d 514 (1981).

Under this analysis, equal protection requires that the statutory classification bear a rational relationship to the legislature's objective in enacting the statute. R. J.

D'Hemecourt Petroleum, Inc. v. McNamara, 444 So.2d 600 (La. 1983), cert. den., 469 U.S. 820, 105 S.Ct. 92, 83 L.Ed.2d 39 (1984). The classification, in order to be valid, must carry out the legislature's intent in defining the classification. Rudolph v. Massachusetts Bay Insurance Co., 472 So.2d 901 (La. 1985).

Admittedly, the protection of oil field laborers and materialmen represents a legitimate legislative purpose and thus satisfies the first of the two questions inherent to this analysis. The Louisiana Oil Well Lien Statute does not, however, satisfy the second predicate question, particularly in the context of unitization. It does not fairly and equally distribute liability for lien claims arising from the drilling or operation of a unit

well where only the particular lease upon which the unit well is physically located is required, by statute, to bear the entire burden of the supplier's lien.

The effect of unitization is to force mineral owners to share the obligations associated with the drilling and operation of the unit well. It is patently unreasonable for Louisiana to have believed that by granting a lien on the drill site lease's participation in production from other units, the avowed purpose of the statute would be served. Why should a claimant be entitled to seek payment of his lien out of production from wells for which he contributed absolutely nothing? Clearly, the classification created by the statute

is not rationally related to achievement of a legitimate state purpose and, therefore, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

If the judgments of the courts below are allowed to stand, Chevron's Wunsch lease and its participation in production from the units for which JHJ performed no services, will be seized and sold to satisfy a debt resulting from the drilling of a well in a completely different unit. Surely, the purposes of the statute, as recognized in Sargent v. Freeman, supra, 204 La. 997, 16 So.2d 737 (1943), did not contemplate such a result. The statute's intended purpose can never be fulfilled unless the commissioner's units are recognized as defining and limiting the property

interests subject to in rem liability for the payment of lien claims arising from unit operations. Under that interpretation, the mineral interest owners in the unit share proportionate liability consistent with their right to share proportionately in unit production. Under any other interpretation, Chevron is denied its constitutionally guaranteed right of economic equal protection under the law.

CONCLUSION

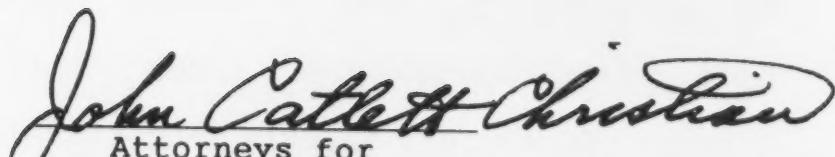
The federal constitutional claims raised by Chevron in this proceeding are substantial and serious. By refusing to consider them based upon Erie principles, the Fifth Circuit Court of Appeals effectively denied Chevron its right of appellate

review over these federal constitutional claims raised by it in this proceeding.

Chevron respectfully submits that certiorari should be granted to review the decisions of the United States Fifth Circuit Court of Appeals and District Court for the Middle District of Louisiana.

D. A. MOLONY
Chevron U.S.A. Inc.
935 Gravier Street
New Orleans, LA 70112

JOHN C. CHRISTIAN
M. TAYLOR DARDEN
MILLING, BENSON,
WOODWARD, HILLYER,
PIERSON & MILLER
1100 Whitney Building
New Orleans, LA 70130
Tel.: (504)581-3333

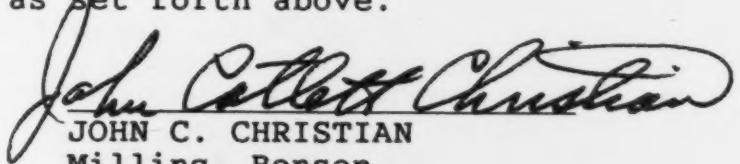

Attorneys for
CHEVRON U.S.A. INC.

**CERTIFICATE OF SERVICE
PURSUANT TO RULE 28 OF
THE SUPREME COURT OF
THE UNITED STATES**

I, JOHN C. CHRISTIAN, one of the counsel of record for Chevron U.S.A. Inc., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 5th day of March, 1987, I served three (3) copies of Chevron U.S.A. Inc.'s Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit upon counsel of record for Respondent, JHJ Limited I, by hand delivery in an envelope addressed as follows:

Mr. F. Neelis Roberts
Gordon, Arata, McCollam,
Stuart & Duplantis
201 St. Charles Avenue
Place St. Charles
Suite 4000
New Orleans, LA 70170

It is further certified that all parties required to be served have been served, and that the list of such parties is as set forth above.

A handwritten signature in cursive script, reading "John C. Christian". The signature is written in dark ink and is positioned above the typed name.

JOHN C. CHRISTIAN
Milling, Benson,
Woodward, Hillyer,
Pierson & Miller
1100 Whitney Building
New Orleans, LA 70130

